



April 10, 2015

ENGROSSED HOUSE BILL No. 1265

DIGEST OF HB 1265 (Updated April 8, 2015 1:06 pm - DI 104)

Citations Affected: IC 16-18; IC 16-21.

Synopsis: Designation of caregiver for patients. Requires a hospital to provide each admitted patient or the patient's health care representative with an opportunity to designate a lay caregiver within a specified time. Specifies documentation of whether the patient designates a lay caregiver. Requires the hospital to do certain acts including the following: (1) Request written consent to release medical information to the designated lay caregiver. (2) Record certain information concerning the designated lay caregiver in the patient's medical chart. (3) Attempt to consult with the designated lay caregiver before release of the patient. (4) Prepare an at home care plan. (5) Provide instructions to the designated lay caregiver concerning after care.

Effective: January 1, 2016.

Zent, Clere, Macer, Brown C

(SENATE SPONSORS — MILLER PATRICIA, CHARBONNEAU, BECKER,
STOOPS)

January 13, 2015, read first time and referred to Committee on Public Health.
February 19, 2015, amended, reported — Do Pass.
February 23, 2015, read second time, ordered engrossed. Engrossed.
February 24, 2015, read third time, passed. Yeas 92, nays 1.

SENATE ACTION

March 2, 2015, read first time and referred to Committee on Health & Provider Services.
April 9, 2015, amended, reported favorably — Do Pass.

EH 1265—LS 6812/DI 104



April 10, 2015

First Regular Session of the 119th General Assembly (2015)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1265

A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 16-18-2-9.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 3 JANUARY 1, 2016]: **Sec. 9.5. "After care", for purposes of**
- 4 **IC 16-21-12, has the meaning set forth in IC 16-21-12-1.**
- 5 SECTION 2. IC 16-18-2-27.5 IS ADDED TO THE INDIANA
- 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE JANUARY 1, 2016]: **Sec. 27.5. "At home care plan",**
- 8 **for purposes of IC 16-21-12, has the meaning set forth in**
- 9 **IC 16-21-12-2.**
- 10 SECTION 3. IC 16-18-2-96.3 IS ADDED TO THE INDIANA
- 11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 12 [EFFECTIVE JANUARY 1, 2016]: **Sec. 96.3. "Discharge", for**
- 13 **purposes of IC 16-21-12, has the meaning set forth in**
- 14 **IC 16-21-12-3.**
- 15 SECTION 4. IC 16-18-2-163.4 IS ADDED TO THE INDIANA

EH 1265—LS 6812/DI 104



CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JANUARY 1, 2016]: **Sec. 163.4. "Health care representative", for purposes of IC 16-21-12, has the meaning set forth in IC 16-21-12-4.**

SECTION 5. IC 16-18-2-198.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: **Sec. 198.3. "Lay caregiver", for purposes of IC 16-21-12, has the meaning set forth in IC 16-21-12-5.**

SECTION 6. IC 16-21-12 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]:

Chapter 12. The Caregiver Advise, Record, and Enable (CARE) Act

Sec. 1. As used in this chapter, "after care" means assistance provided by a lay caregiver to a patient in the patient's residence under an at home care plan following the patient's discharge from a hospital. The assistance may include any of the following:

- (1) Assisting with basic activities of daily living.**
- (2) Assisting with instrumental activities of daily living.**
- (3) Assisting with medical or nursing tasks, including:**
 - (A) managing wound care;**
 - (B) assisting in administering medications; or**
 - (C) operating medical equipment.**

Sec. 2. As used in this chapter, "at home care plan" means any plan that serves to describe the after care needs of a patient upon discharge from a hospital to the patient's residence, if the at home care plan:

- (1) is developed by:**
 - (A) a registered nurse licensed under IC 25-23, social worker licensed under IC 25-23.6, or other licensed health care professional; or**
 - (B) an individual supervised by a licensed registered nurse, licensed social worker, or other licensed health care professional;**
- (2) is based on an evaluation of the patient's need for after care, taking into consideration the patient's functional status and cognitive ability, including the patient's capacity for self care; and**
- (3) includes contact information for hospital personnel or the patient's physician if the patient or the patient's lay caregiver designated under this chapter has questions regarding the**



1 patient's after care.

2 The term includes a discharge plan prepared for the patient that
3 is developed under the discharge planning requirements of the
4 Medicare program's conditions of participation.

5 Sec. 3. As used in this chapter, "discharge" means a patient's
6 exit or release from a hospital following an inpatient
7 hospitalization.

8 Sec. 4. As used in this chapter, "health care representative"
9 means an individual appointed as the patient's health care
10 representative under IC 16-36-1-7 or an individual holding the
11 patient's health care power of attorney under IC 30-5-5-16.
12 However, if the patient has not appointed a health care
13 representative under IC 16-36-1-7 or granted a health care power
14 of attorney to an individual under IC 30-5-5-16, the term means an
15 individual authorized to consent to health care for the patient
16 under IC 16-36-1-5.

17 Sec. 5. As used in this chapter, "lay caregiver" means an
18 individual who:

19 (1) has a significant relationship with a patient;

20 (2) is designated as a lay caregiver by:

21 (A) the patient;

22 (B) the patient's health care representative; or

23 (C) if the patient has not appointed a health care
24 representative, the patient's legal guardian;

25 under this chapter; and

26 (3) provides after care to the patient.

27 Sec. 6. As used in this chapter, "residence" means a dwelling
28 considered by a patient to be the patient's temporary or permanent
29 home. The term does not include a hospital licensed under this
30 article, a health facility or residential care facility licensed under
31 IC 16-28, a state mental health institution operated under
32 IC 12-24-1-3, a private mental health institution licensed under
33 IC 12-25, an assisted living facility registered with the office of the
34 secretary of family and social services as a housing with services
35 establishment, or an institution or facility operated by the
36 department of correction or a law enforcement agency.

37 Sec. 7. (a) As soon as practicable following a patient's admission
38 to a hospital as an inpatient and before the patient's discharge
39 from the hospital to the patient's residence or transfer to another
40 facility, the hospital shall provide each patient or the patient's
41 health care representative with an opportunity to designate a lay
42 caregiver. A patient or the patient's health care representative may



1 decline to designate a lay caregiver.

2 (b) If a patient or the patient's health care representative
3 declines to designate a lay caregiver, or does not provide the
4 written consent or the information described in subsection (c), the
5 hospital shall document that fact in the patient's medical record
6 and the hospital is considered to have complied with the
7 requirements of this chapter.

8 (c) If a patient or the patient's health care representative
9 designates a lay caregiver, the hospital shall do the following:

10 (1) Request written consent by the patient or the patient's
11 health care representative to release medical information to
12 the patient's designated lay caregiver following the hospital's
13 procedures for releasing personal health information in
14 compliance with federal and state laws.

15 (2) Record the following information in the patient's medical
16 record concerning the designated lay caregiver:

17 (A) The name, address, and telephone number of the
18 designated lay caregiver.

19 (B) The relationship between the patient and the
20 designated lay caregiver.

21 Sec. 8. (a) If a patient or the patient's health care representative
22 designates a lay caregiver, and provides the written consent and
23 the other information described in section 7(c) of this chapter, the
24 hospital shall, as soon as practicable before the patient's discharge
25 from the hospital, provide the patient or the patient's health care
26 representative with an opportunity to advise hospital personnel of
27 a preferred means of contacting the lay caregiver.

28 (b) If the patient or the patient's health care representative
29 advises hospital personnel of a preferred means of contacting the
30 designated lay caregiver under subsection (a), the hospital shall,
31 when attempting to contact a patient's designated lay caregiver,
32 attempt to use the preferred means of contact provided in
33 subsection (a) if the preferred means of contact is permitted by the
34 hospital and is readily available for use by hospital personnel when
35 attempting to contact the lay caregiver.

36 (c) If hospital personnel, in the exercise of their professional
37 judgment, determine that a patient lacks the physical or mental
38 capacity to accurately and timely notify the patient's lay caregiver
39 of the patient's pending discharge or transfer to another facility,
40 the hospital shall, within a reasonable time before the patient's
41 discharge or transfer, attempt to notify the patient's lay caregiver
42 of the pending discharge or transfer.



1 **Sec. 9. (a) If a patient or the patient's health care representative:**

2 **(1) designates a lay caregiver; and**

3 **(2) provides the written consent and the other information**
 4 **described in section 7(c) of this chapter;**

5 the hospital shall, as soon as practicable before the patient's
 6 discharge from a hospital, attempt to consult with the designated
 7 lay caregiver to prepare the lay caregiver for the patient's after
 8 care needs and issue an at home care plan that describes the
 9 patient's after care needs upon discharge from the hospital to the
 10 patient's residence.

11 **(b) An at home care plan may include contact information for**
 12 **health care, community resources, and long term services and**
 13 **supports necessary to successfully carry out the patient's at home**
 14 **care plan.**

15 **Sec. 10. (a) As part of the consultation under section 9(a) of this**
 16 **chapter, the hospital shall attempt to provide the designated lay**
 17 **caregiver the opportunity to ask questions and receive answers**
 18 **about the after care needs of the patient.**

19 **(b) If the hospital personnel who consult with the lay caregiver**
 20 **under section 9(a) of this chapter, determine, in the exercise of**
 21 **their professional judgment, that a live or recorded demonstration**
 22 **is necessary in order to appropriately prepare the lay caregiver for**
 23 **the patient's after care needs, the hospital may provide to a**
 24 **designated lay caregiver a live or recorded demonstration of the**
 25 **after care described in the patient's at home care plan.**

26 **Sec. 11. If the hospital is unable to contact the designated lay**
 27 **caregiver, the lack of contact may not interfere with, delay, or**
 28 **otherwise affect the medical care provided to the patient or an**
 29 **otherwise appropriate discharge or transfer to another facility.**

30 **Sec. 12. This chapter may not be construed to require a patient**
 31 **or the patient's health care representative to designate a lay**
 32 **caregiver.**

33 **Sec. 13. The designation of a lay caregiver does not obligate any**
 34 **individual to perform any after care for the patient.**

35 **Sec. 14. A hospital may not allow the process of appointing or**
 36 **the refusal or failure to appoint a lay caregiver for a patient to**
 37 **interfere with, delay, or otherwise affect the services that the**
 38 **hospital provides to a patient.**

39 **Sec. 15. (a) This chapter may not be construed to interfere with**
 40 **the rights of a health care representative appointed under**
 41 **IC 16-36-1.**

42 **(b) This chapter may not be construed to create a private right**



1 of action against a hospital, a hospital employee, or an individual
2 with whom a hospital has a contractual relationship.

3 (c) No cause of action of any type arises against a hospital, a
4 hospital employee, a staff member, or an individual with whom a
5 hospital has a contractual relationship based upon an act or
6 omission of a lay caregiver.

7 Sec. 16. This chapter may not be construed to establish a new
8 requirement to reimburse or otherwise pay for services rendered
9 by a lay caregiver for after care services.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Public Health, to which was referred House Bill 1265, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective dates in SECTIONS 1 through 3 with "[EFFECTIVE JANUARY 1, 2016]".

Page 1, between lines 4 and 5, begin a new paragraph and insert:

"SECTION 2. IC 16-18-2-27.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: **Sec. 27.5. "At home care plan", for purposes of IC 16-21-12, has the meaning set forth in IC 16-21-12-2.**

SECTION 3. IC 16-18-2-96.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: **Sec. 96.3. "Discharge", for purposes of IC 16-21-12, has the meaning set forth in IC 16-21-12-3.**

SECTION 4. IC 16-18-2-163.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2016]: **Sec. 163.4. "Health care representative", for purposes of IC 16-21-12, has the meaning set forth in IC 16-21-12-4."**

Page 1, line 5, delete "IC 16-18-2-48.7" and insert "IC 16-18-2-198.3".

Page 1, line 7, delete "48.7. "Caregiver"," and insert "**198.3. "Lay caregiver",**".

Page 1, line 8, delete "IC 16-21-12-2." and insert "**IC 16-21-12-5."**

Page 1, delete lines 14 through 15, begin a new paragraph and insert:

"Sec. 1. As used in this chapter, "after care" means assistance provided by a lay caregiver to a patient in the patient's residence under an at home care plan following the patient's discharge from a hospital. The assistance may include any of the following:

- (1) Assisting with basic activities of daily living.**
- (2) Assisting with instrumental activities of daily living.**
- (3) Assisting with medical or nursing tasks, including:**
 - (A) managing wound care;**
 - (B) assisting in administering medications; or**
 - (C) operating medical equipment.**

Sec. 2. As used in this chapter, "at home care plan" means any plan that serves to describe the after care needs of a patient upon



discharge from a hospital to the patient's residence, if the at home care plan:

(1) is developed by:

(A) a registered nurse licensed under IC 25-23, social worker licensed under IC 25-23.6, or other licensed health care professional; or

(B) an individual supervised by a licensed registered nurse, licensed social worker, or other licensed health care professional;

(2) is based on an evaluation of the patient's need for after care, taking into consideration the patient's functional status and cognitive ability, including the patient's capacity for self care; and

(3) includes contact information for hospital personnel or the patient's physician if the patient or the patient's lay caregiver designated under this chapter has questions regarding the patient's after care.

The term includes a discharge plan prepared for the patient that is developed under the discharge planning requirements of the Medicare program's conditions of participation.

Sec. 3. As used in this chapter, "discharge" means a patient's exit or release from a hospital following an inpatient hospitalization.

Sec. 4. As used in this chapter, "health care representative" means an individual appointed as the patient's health care representative under IC 16-36-1-7 or an individual holding the patient's health care power of attorney under IC 30-5-5-16. However, if the patient has not appointed a health care representative under IC 16-36-1-7 or granted a health care power of attorney to an individual under IC 30-5-5-16, the term means an individual authorized to consent to health care for the patient under IC 16-36-1-5.

Sec. 5. As used in this chapter, "lay caregiver" means an individual who:

(1) has a significant relationship with a patient;

(2) is designated as a lay caregiver by:

(A) the patient;

(B) the patient's health care representative; or

(C) if the patient has not appointed a health care representative, the patient's legal guardian;

under this chapter; and

(3) provides after care to the patient.



Sec. 6. As used in this chapter, "residence" means a dwelling considered by a patient to be the patient's temporary or permanent home. The term does not include a hospital licensed under this article, a health facility or residential care facility licensed under IC 16-28, a state mental health institution operated under IC 12-24-1-3, a private mental health institution licensed under IC 12-25, an assisted living facility registered with the office of the secretary of family and social services as a housing with services establishment, or an institution or facility operated by the department of correction or a law enforcement agency.

Sec. 7. (a) As soon as practicable following a patient's admission to a hospital as an inpatient and before the patient's discharge from the hospital to the patient's residence or transfer to another facility, the hospital shall provide each patient or the patient's health care representative with an opportunity to designate a lay caregiver.

(b) If a patient or the patient's health care representative declines to designate a lay caregiver, or does not provide the written consent or the information described in subsection (c), the hospital shall document that fact in the patient's medical record and the hospital is considered to have complied with the requirements of this chapter.

(c) If a patient or the patient's health care representative designates a lay caregiver, the hospital shall do the following:

(1) Request written consent by the patient or the patient's health care representative to release medical information to the patient's designated lay caregiver following the hospital's procedures for releasing personal health information in compliance with federal and state laws.

(2) Record the following information in the patient's medical record concerning the designated lay caregiver:

(A) The name, address, and telephone number of the designated lay caregiver.

(B) The relationship between the patient and the designated lay caregiver.

Sec. 8. (a) If a patient or the patient's health care representative designates a lay caregiver, and provides the written consent and the other information described in section 7(c) of this chapter, the hospital shall, as soon as practicable before the patient's discharge from the hospital, provide the patient or the patient's health care representative with an opportunity to advise hospital personnel of a preferred means of contacting the lay caregiver.



(b) If the patient or the patient's health care representative advises hospital personnel of a preferred means of contacting the designated lay caregiver under subsection (a), the hospital shall, when attempting to contact a patient's designated lay caregiver, attempt to use the preferred means of contact provided in subsection (a) if the preferred means of contact is permitted by the hospital and is readily available for use by hospital personnel when attempting to contact the lay caregiver.

(c) If hospital personnel, in the exercise of their professional judgment, determine that a patient lacks the physical or mental capacity to accurately and timely notify the patient's lay caregiver of the patient's pending discharge or transfer to another facility, the hospital shall, within a reasonable time before the patient's discharge or transfer, attempt to notify the patient's lay caregiver of the pending discharge or transfer

Sec. 9. (a) If a patient or the patient's health care representative:

- (1) designates a lay caregiver; and
- (2) provides the written consent and the other information described in section 7(c) of this chapter;

the hospital shall, as soon as practicable before the patient's discharge from a hospital, attempt to consult with the designated lay caregiver to prepare the lay caregiver for the patient's after care needs and issue an at home care plan that describes the patient's after care needs upon discharge from the hospital to the patient's residence.

(b) An at home care plan must include contact information for any health care, community resources, and long term services and supports necessary to successfully carry out the patient's at home care plan.

Sec. 10. (a) As part of the consultation under section 9(a) of this chapter, the hospital shall attempt to provide the designated lay caregiver the opportunity to ask questions and receive answers about the after care needs of the patient.

(b) If the hospital personnel who consult with the lay caregiver under section 9(a) of this chapter, determine, in the exercise of their professional judgment, that a live or recorded demonstration is necessary in order to appropriately prepare the lay caregiver for the patient's after care needs, the hospital may provide to a designated lay caregiver a live or recorded demonstration of the after care described in the patient's at home care plan.

Sec. 11. If the hospital is unable to contact the designated lay caregiver, the lack of contact may not interfere with, delay, or



otherwise affect the medical care provided to the patient or an otherwise appropriate discharge or transfer to another facility.

Sec. 12. This chapter may not be construed to require a patient or the patient's health care representative to designate a lay caregiver.

Sec. 13. The designation of a lay caregiver does not obligate any individual to perform any after care for the patient.

Sec. 14. A hospital may not allow the process of appointing or the refusal or failure to appoint a lay caregiver for a patient to interfere with, delay, or otherwise affect the services that the hospital provides to a patient.

Sec. 15. (a) This chapter may not be construed to interfere with the rights of a health care representative appointed under IC 16-36-1.

(b) This chapter may not be construed to create a private right of action against a hospital, a hospital employee, or an individual with whom a hospital has a contractual relationship.

(c) No cause of action of any type arises against a hospital, a hospital employee, a staff member, or an individual with whom a hospital has a contractual relationship based upon an act or omission of a lay caregiver.

Sec. 16. Except for payments provided through or administered by the office of the secretary of family and social services, federal or state funds, including state tax credits, may not be used for payment to a lay caregiver for the lay caregiver's performance of after care services."

Delete pages 2 through 4.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1265 as introduced.)

CLERE

Committee Vote: yeas 11, nays 0.



COMMITTEE REPORT

Madam President: The Senate Committee on Health and Provider Services, to which was referred House Bill No. 1265, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 4, delete "IC 16-18-21-1." and insert "**IC 16-21-12-1.**".

Page 3, line 42, after "caregiver." insert "**A patient or the patient's health care representative may decline to designate a lay caregiver.**".

Page 4, line 41, after "transfer" insert ".".

Page 5, line 10, delete "must" and insert "**may**".

Page 5, line 11, delete "any".

Page 6, delete lines 6 through 10, begin a new paragraph and insert:

"Sec. 16. This chapter may not be construed to establish a new requirement to reimburse or otherwise pay for services rendered by a lay caregiver for after care services."

and when so amended that said bill do pass.

(Reference is to HB 1265 as printed February 20, 2015.)

MILLER PATRICIA, Chairperson

Committee Vote: Yeas 8, Nays 0.

